

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

ROBERT J. GLADWIN, Judge

CA06-1078

FEBRUARY 7, 2007

SHARYL RAY

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. JV 2005-214]

V.

HON. MARK HEWETT,
JUDGE

ARKANSAS DEPARTMENT OF
HEALTH and HUMAN SERVICES
APPELLEE

AFFIRMED

Appellant Sharyl Ray appeals the Sebastian County Circuit Court's order filed on July 10, 2006 terminating parental rights. Appellant's three points on appeal are that the trial court erred by finding there was clear and convincing evidence that: (1) termination of parental rights was in the children's best interest and that one of the grounds was proven; (2) appellee Arkansas Department of Health and Human Services (DHS) made reasonable efforts to provide services to reunify the family; and (3) an appropriate permanency plan exists, and that the children are likely to be adopted. We affirm.

I. Facts

Appellant is the mother of two boys, LR and SR. The children were placed in the custody of DHS on July 6, 2004, due to appellant's drug use and incarceration. They were

returned to their mother's custody on January 4, 2005. On March 24, 2005, LR and SR, who were four and two years of age respectively, were found walking down a street without adult supervision. LR had on no shoes. Both LR's and SR's clothes were soaked in urine. They could not tell the police officers who found them where they lived. When DHS arrived to discuss the matter with appellant, she reported that she had "just been released from Gateway for the fifth time," and had taken some drugs that made her oversleep. Both children were placed in DHS custody.

A petition for emergency custody was filed March 28, 2005, asking that both boys be found dependent-neglected based upon drug use by the mother. On April 2, 2005, the appellant was arrested for possession of a controlled substance. On April 10, 2005, appellant was again admitted to a residential drug treatment facility. On May 23, 2005, the court entered its adjudication order following a hearing held on April 29, 2005, finding that the children were dependent-neglected by reason of the mother's drug addiction and parental unfitness, and placing them with DHS. The appellant was ordered to obtain and maintain stable, appropriate housing of her own with at least two bedrooms; obtain and maintain employment with income sufficient to support the family; complete parenting classes; complete inpatient, outpatient, and aftercare drug treatment; submit to a psychological evaluation and treatment; submit to random drug screens; visit regularly; and obtain transportation.

On May 18, 2005, appellant completed inpatient drug treatment at Gateway. On June 5, 2005, appellant was arrested for possession of a controlled substance and public intoxication. On July 12, 2005, appellant submitted to a psychological evaluation. She admitted at that time to using opiates, Xanax, and methamphetamine. She also admitted to being Hepatitis C positive. The psychological evaluator recommended that she complete a long-term substance-abuse program. On August 25, 2005, Gateway made a referral to Freedom House, a long-term program.

A review hearing was held September 29, 2005, and custody was left with DHS. The goal continued to be reunification, and the trial court found that the mother had complied with the case plan and orders of the court in that she had visited the children and had employment. The appellant was ordered to stay sober, complete a long-term substance-abuse program and submit to random drug screens no less than monthly.

On November 9, 2005, appellant began outpatient treatment at Harbor House. On February 4, 2006, appellant was arrested for reckless driving and possession of drug paraphernalia. On February 10, 2006, appellant tested positive for oxycodone. On February 14, 2006, Harbor House reported that she was in danger of being discharged from the outpatient program for lack of attendance. On February 24, 2006, appellant was arrested on charges of forgery, based on the allegation that she had stolen checks from her mother.

A permanency planning hearing was conducted on March 2, 2006. At the hearing, the trial court found that appellant had not complied with the orders of the court or the case

plan in that she had no housing or employment and had relapsed in her use of drugs and had been arrested numerous times on drug-related charges since the children had been in foster care. The trial court found that DHS had made reasonable efforts to provide services to achieve reunification. Specifically, DHS provided referrals to drug treatment and for a psychological evaluation, random drug screens, visitation, parenting classes, and foster care services.

On March 27, 2006, a petition for termination of parental rights and authorization to consent to adoption was filed. On April 12, 2006, appellant was admitted to Freedom House. On June 2, 2006, a termination of parental rights hearing was held and the trial court granted DHS's petition to terminate parental rights. An order terminating parental rights and granting authorization to consent to adoption was filed July 10, 2006. The appellant filed her notice of appeal on July 24, 2006.

II. Applicable law

Arkansas Code Annotated section 9-27-341(b)(3)(A) & (B) (Supp. 2003) provides in pertinent part that a court may enter an order terminating parental rights if it finds by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

* * *

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juveniles health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parents circumstances that prevent return of the juvenile to the custody of the parent.

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Johnson v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002). Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Id.* Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

Cases involving the termination of parental rights are reviewed de novo on appeal. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). The Arkansas Supreme Court has discussed our standard of review in parental-rights termination cases as follows:

Arkansas Code Annotated section 9-27-341(b)(3) . . . requires an order terminating parental rights be based upon clear and convincing evidence. Our law is well settled that when the burden of proving a disputed fact in chancery court is by clear and convincing evidence, the question that must be answered on appeal is whether the [circuit] court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. Clear and convincing evidence is that degree of

proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. In resolving the clearly erroneous question, we must give due regard to the opportunity of the [circuit] court to judge the credibility of witnesses. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made.

Rodriguez v. Ark. Dep't of Human Servs., 360 Ark. 180, 185, 200 S.W.3d 431, 434 (2004) (citations omitted).

III. Best interest of children

Appellant first argues that she testified at the termination hearing that she was in a treatment facility called Freedom House and that she had completed the residential portion of the treatment. She claimed that she was now in “Chem Free Living.” The reason for the delay in obtaining admittance to Freedom House was that she needed a referral from DHS and she could not contact her caseworker. She pointed out that she took her psychological evaluation and submitted to random drug screens. She testified that she obtained transportation. She argues that the real issue is whether she has addressed her drug problem and will be able to stay off drugs. She claims that she has now successfully completed a treatment program because she is in “Chem Free,” a facility where she lives and is allowed to leave at 6:30 a.m. and return at 10:30 p.m. She claims that she is required to have a job, become financially stable, maintain a bank account, and take care of her business. While there, she is subject to random drug screens. She argues that based upon the law as cited above and her testimony, she has shown a concerted effort to comply with her case plan.

DHS argues that appellant does not challenge that the record is insufficient to support at least one statutory ground for termination, and therefore, that issue is waived. She does not explain how she believes the trial court's findings were clearly erroneous, which of the findings were erroneous, and has generally ignored the lion's share of the evidence in support of termination.

In *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004), the court held that a parent's continued drug use and failure to maintain stable housing after their children are in foster care, in itself is sufficient evidence to find that the parent is indifferent to remedying their issues. DHS argues, and this court agrees, that based upon the facts as stated above, the trial court had before it sufficient evidence to terminate parental rights.

Appellant failed to maintain stable housing or employment. She entered and completed drug treatment in 2004 and 2005. She tested positive for drug use on many occasions after her children had been removed from her care. She continued to use drugs after she had participated in drug treatment. Two weeks after she completed drug rehabilitation she was arrested for possession of a controlled substance. She used illegal drugs while participating in out-patient drug treatment. She did not attend all of her out-patient drug-treatment meetings. She was arrested on forgery charges for stealing her mother's checks. Appellant does not adequately address why these acts do not constitute "studied indifference" or why the trial court's findings were clearly erroneous in light of

these facts. Therefore, we uphold the trial court's finding that termination of parental rights was in the children's best interest. The trial court had before it clear and convincing evidence that the children continued out of the custody of the appellant for twelve months and, despite a meaningful effort by the department to rehabilitate appellant and correct the conditions that caused removal, those conditions were not remedied by the appellant. Also, appellant manifested the incapacity or indifference to rehabilitate her circumstances, preventing return of the children to her custody.

IV. Reunification services

Appellant argues that Gateway referred her to Freedom House on August 25, 2005, but she could not gain admission at that time because she did not receive the necessary assistance from DHS until March 2006. Between August 2005 and March 2006, she consistently visited the children. She maintains that any necessary paperwork for her admission to Freedom House could have been completed during one of those visits. Therefore, she argues that the trial court erred in finding clear and convincing evidence that DHS made reasonable efforts to provide reunification services to the mother in light of DHS's failure to assist her between August 2005 and March 2006.

DHS claims that this argument has no merit because it was not properly preserved for appeal, and further, that appellant fails to cite to authority in support of her argument. However, the trial court found in its order terminating parental rights that DHS provided the

appropriate reunification services, and appellant appeals this finding on sufficiency grounds.

In addressing appellant's argument, we hold that there was sufficient evidence before the trial court to find that DHS made reasonable efforts to provide services to reunify the family. Appellant did not dispute that DHS provided referrals to drug treatment facilities, a psychological evaluation, random drug screens, visitation, parenting classes, and foster care services. We hold that the trial court did not err in finding clear and convincing evidence of DHS's reasonable efforts to provide reunification services.

V. Permanency plan and likelihood of adoption

Under Ark. Code Ann. § 9-27-341 (b)(1)(A), the court may consider a petition to terminate parental rights if there is an appropriate permanency plan in place for the children. In evaluating the plan, the court is to consider whether the children are likely to be adopted if the termination is granted. Ark. Code Ann. § 9-27-341(b)(3)(A)(i)(Repl. 2002). Appellant claims that the DHS case worker testified that the children have no physical or emotional problems that would make it difficult for them to be adopted. Appellant argues that the testimony as set forth above is not clear and convincing evidence that DHS has an appropriate permanency plan for the children and that the children are likely to be adopted if appellant's parental rights are terminated. She argues that the foster parents were not present to testify whether they wish to adopt the children, nor was an adoption specialist

present to testify. Therefore, she claims that the trial court erred when it found that DHS had met its burden of proof with regard to whether an appropriate permanency plan exists and whether the children are adoptable.

DHS argues that appellant cites no case law and fails to cite in the record where she properly preserved her issues for appeal, made objections, or received rulings from the trial court.¹ Again, we hold that appellant is challenging the order terminating parental rights on sufficiency grounds, and will address the argument.

DHS claims that the record on appeal is sufficient to support the trial court's findings that there was an appropriate permanency plan. DHS argues that there is no requirement that the trial court find that the children are adoptable because termination may still be in their best interest for other reasons. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, ___ S.W.3d ___ (2005) In *McFarland, supra*, appellant complained only that the court erred in finding the children were adoptable. We stated that there is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *Id.*

¹DHS argues that because of the new forms for appeals under Ark. Sup. Ct. R. 6-9, it is impossible to determine from the notice of appeal exactly what is being appealed. DHS, citing Ark. Sup. Ct. R. 4-2(a)(5), asks this court to dismiss the appeal for lack of a complete designation of the record, where the issue on appeal is whether the evidence is sufficient to support the trial court's findings. However, under Ark. Sup. Ct. R. 4-2(b)(3), this court is able to reach the merits of the case despite any deficiencies, and rebriefing is not necessary.

In the instant case, the trial court found it to be in the children's best interest to terminate appellant's parental rights, and based upon the facts as recited above, we hold that there was no error in finding by clear and convincing evidence that an appropriate permanency plan exists and the children are adoptable.

Affirmed.

BIRD and BAKER, JJ., agree.